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UNITED STATES DISTRICT COURT

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WESTERN DISTRICT OF NEW YORK

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 UNITED STATES OF AMERICA) 21CR32
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vs.

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ROBERT C. MORGAN) Rochester, New York
) April 12, 2022
 Defendant. 9:00 a.m.

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PLEA

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TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE ELIZABETH A. WOLFORD
 UNITED STATES DISTRICT JUDGE

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3 P R O C E E D I N G

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THE COURT: Morning, everybody.

THE CLERK: Court calls the matter of the
United States versus Robert Morgan, 21CR32.

THE COURT: Let's have appearances for the
record. On behalf of the government?

MR. GLABERSON: Evan Glaberson on behalf of
the United States. Good morning.

THE COURT: Good morning.

On behalf of Mr. Morgan.

MR. COHEN: Good morning, your Honor Joel
Cohen, Mylen Denerstein and Timothy Sun.

THE COURT: Good morning and Robert Morgan
IS here as well. I understand, Mr. Mr. Morgan, that
pursuant to the terms and conditions of a plea
agreement, you intend to plead to a one count Title 18
U.S.C. Section 371, conspiracy to commit wire fraud. Is
that correct?

THE DEFENDANT: Yes, your Honor.

THE COURT: Why don't we make sure the

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09:11:54 2 microphone is right there in front of Mr. Morgan? The
09:11:58 3 base of it can move.

09:12:01 4 THE DEFENDANT: Yes.

09:12:01 5 THE COURT: Because I don't want you to have
09:12:03 6 to keep leaning forward every time I ask you a question.
09:12:06 7 I'm going to ask you a number of questions. I know you
09:12:10 8 were here last week for the plea hearings for your
09:12:13 9 co-defendants. As you know, there are a lot of
09:12:15 10 questions that I need to ask you, and I want to make
09:12:17 11 sure that you're able to answer them, and I'm able to
09:12:20 12 hear you and my court reporter is able to take down your
09:12:23 13 testimony. So the very first step is for you to be
09:12:25 14 sworn in. I'll ask you to please raise your right hand
09:12:29 15 and my courtroom deputy will swear you in.

09:12:33 16 (Whereupon, the defendant was administered
09:12:40 17 the oath by the courtroom deputy.)

09:12:40 18 THE COURT: All right. What you just did
09:12:42 19 there, sir, is you took an oath to tell me the truth.
09:12:45 20 Therefore, I'm going to expect you to answer my
09:12:47 21 questions truthfully. If you do not answer my questions
09:12:50 22 truthfully, you could be prosecuted for another crime
09:12:53 23 called perjury. Do you understand that?

09:12:55 24 THE DEFENDANT: Yes, I do.

09:12:57 25 THE COURT: Could you state your full name

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09:12:58 2 for the record?

09:12:59 3 THE DEFENDANT: Robert C. Morgan.

09:13:00 4 THE COURT: And where were you born, Mr.
09:13:02 5 Morgan?

09:13:03 6 THE DEFENDANT: Rochester, New York.

09:13:03 7 THE COURT: How old are you?

09:13:04 8 THE DEFENDANT: Sixty-five.

09:13:06 9 THE COURT: How far did you go in school?

09:13:07 10 THE DEFENDANT: I got a -- I went through
09:13:11 11 high school and three years of college.

09:13:13 12 THE COURT: I take it you can read, write
09:13:16 13 and understand English?

09:13:16 14 THE DEFENDANT: Yes.

09:13:17 15 THE COURT: Are you currently being treated
09:13:20 16 by any medical or mental health professional for any
09:13:23 17 condition that could impact your ability to understand
09:13:26 18 what's happening here today?

09:13:27 19 THE DEFENDANT: No.

09:13:27 20 THE COURT: Are you taking any prescription
09:13:30 21 medication?

09:13:30 22 THE DEFENDANT: Yes, I am.

09:13:31 23 THE COURT: Could you tell me what you're
09:13:33 24 taking?

09:13:33 25 THE DEFENDANT: Yes, I'm taking several

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09:13:36 2 narcotics. One of them is Oxycodone for approximately
09:13:42 3 31 years; and I'm taking Fentanyl. I'm wearing a
09:13:46 4 Fentanyl patch. And those are the two narcotics, and
09:13:49 5 then I take Gabapentin for nerve pain. And I take
09:13:57 6 Metoprolol for a heart issue.

09:13:59 7 THE COURT: Other than the Metoprolol, are
09:14:01 8 all of the other medications for pain management?

09:14:04 9 THE DEFENDANT: Yes.

09:14:04 10 THE COURT: And the pain that you need to
09:14:10 11 manage, is that at all interfering with your ability to
09:14:14 12 understand what's happening here in court?

09:14:16 13 THE DEFENDANT: No.

09:14:16 14 THE COURT: What about the medications that
09:14:18 15 you just described, including the one for the heart
09:14:22 16 condition, as well as the pain management medications,
09:14:24 17 are those at all interfering with your ability to
09:14:27 18 understand what's happening here in court?

09:14:29 19 THE DEFENDANT: No, not at all.

09:14:30 20 THE COURT: Did you take any of these
09:14:35 21 medications this morning?

09:14:36 22 THE DEFENDANT: Yes.

09:14:37 23 THE COURT: All of them or --

09:14:38 24 THE DEFENDANT: Yes, that's correct.

09:14:39 25 THE COURT: And is that normally when you

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09:14:41 2 take the medication?

09:14:42 3 THE DEFENDANT: Yes.

09:14:44 4 THE COURT: Now, are you under the influence
09:14:46 5 of any other drugs or any alcohol?

09:14:50 6 THE DEFENDANT: No.

09:14:50 7 THE COURT: As far as you're concerned, is
09:14:53 8 there any reason that you cannot understand what's
09:14:55 9 happening here in court today?

09:14:57 10 THE DEFENDANT: No, there is no reason.

09:14:58 11 THE COURT: Mr. Cohen, obviously, you've
09:14:59 12 been representing Mr. Morgan for some time now. Are you
09:15:04 13 confident he is able to comprehend what's going on in
09:15:08 14 court today and the terms and conditions of this plea
09:15:11 15 agreement?

09:15:11 16 MR. KARASZEWSKI: Yes, I am.

09:15:12 17 THE COURT: Okay. Thank you. Mr. Morgan,
09:15:13 18 have you had an opportunity to talk to your attorneys
09:15:16 19 about the government's case against you, and by that I
09:15:18 20 mean the proof that the government would have if this
09:15:22 21 case went to trial?

09:15:22 22 THE DEFENDANT: Yes, I did.

09:15:23 23 THE COURT: And have you also talked with
09:15:25 24 your attorneys about what the likely result might be if
09:15:27 25 the case went to trial?

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09:15:28 2 THE DEFENDANT: Yes.

09:15:28 3 THE COURT: Would it be fair to state that,
09:15:30 4 based on your discussions with your attorneys, you
09:15:32 5 believe entering into this plea agreement and pleading
09:15:35 6 guilty to this charge is in your best interest?

09:15:37 7 THE DEFENDANT: Yes, it is.

09:15:38 8 THE COURT: Now, have you gone over this
09:15:40 9 written plea agreement with your attorneys?

09:15:42 10 THE DEFENDANT: Yes.

09:15:42 11 THE COURT: To the extent that you had any
09:15:44 12 questions, were they able to answer them to your
09:15:46 13 satisfaction?

09:15:47 14 THE DEFENDANT: Yes.

09:15:48 15 THE COURT: Have you read the agreement
09:15:50 16 yourself?

09:15:50 17 THE DEFENDANT: Yes, I have.

09:15:51 18 THE COURT: And have you had enough time to
09:15:54 19 talk to your attorneys about this before coming in here
09:15:57 20 today?

09:15:57 21 THE DEFENDANT: Yes, I have.

09:15:58 22 THE COURT: Are you satisfied with their
09:16:00 23 advice and representation?

09:16:02 24 THE DEFENDANT: Yes.

09:16:03 25 THE COURT: What I'd like to do, Mr. Morgan,

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09:16:05 2 is go through some of the terms of the plea agreement
09:16:07 3 with you. I'm not going to go through everything
09:16:10 4 because you've told me that you've read it and you've
09:16:12 5 gone over it with your attorneys. But, if you have a
09:16:15 6 question about anything, whether I bring it up or not, I
09:16:17 7 want you to stop me and ask your question. Okay?

09:16:19 8 THE DEFENDANT: Okay, thank you.

09:16:20 9 THE COURT: So what I would like to do is
09:16:22 10 direct your attention to the first paragraph of the plea
09:16:24 11 agreement. Because, in there, among other things, it
09:16:27 12 talks about the potential penalties that can be imposed
09:16:30 13 for the crime that you're pleading guilty to. The
09:16:33 14 potential maximum prison sentence is five years. The
09:16:37 15 maximum fine is \$250,000. There is a \$100 mandatory
09:16:43 16 special assessment. And then the supervised release
09:16:45 17 term can be up to three years. Do you understand that
09:16:48 18 those are the potential penalties?

09:16:50 19 THE DEFENDANT: Yes, your Honor.

09:16:51 20 THE COURT: Now, if you were to be placed on
09:16:55 21 supervised release, and I appreciate that there is an
09:16:58 22 agreement in here that no supervised release can be
09:17:01 23 imposed, and we'll talk about that in a moment, but if
09:17:04 24 you were to be placed on supervised release and you
09:17:07 25 violated the terms and conditions of that supervised

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09:17:11 2 release, then, as set forth in paragraph two, you could
09:17:14 3 go to prison for up to two years without getting any
09:17:17 4 credit for the time that you've already served on
09:17:19 5 supervised release. Do you understand that?

09:17:21 6 THE DEFENDANT: Yes, I do.

09:17:22 7 THE COURT: All right. Why don't you, if
09:17:25 8 you would, turn to paragraph five of the plea agreement?

09:17:37 9 THE DEFENDANT: Yes, okay.

09:17:38 10 THE COURT: Do you see the reference at the
09:17:39 11 end of paragraph five to the "Sentencing Reform Act of
09:17:42 12 1984"?

09:17:43 13 THE DEFENDANT: Yes, I do.

09:17:44 14 THE COURT: That is the federal law that I
09:17:45 15 have to follow when I sentence you. And that federal
09:17:48 16 law requires me to consider a number of factors before I
09:17:51 17 impose a sentence. I have to consider your background,
09:17:53 18 the nature and circumstances of the crime that you pled
09:17:56 19 guilty to. But the very first step that I have to go
09:18:00 20 through is I have to figure out what the Sentencing
09:18:03 21 Guidelines would recommend for a sentence. Have you
09:18:05 22 talked to your attorneys about the Sentencing
09:18:07 23 Guidelines?

09:18:07 24 THE DEFENDANT: Yes, your Honor.

09:18:08 25 THE COURT: The Sentencing Guidelines are

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09:18:11 2 advisory, they are not mandatory, but they require me to
09:18:14 3 determine two numbers: One is called your offense
09:18:17 4 level; and one is called your criminal history category.
09:18:20 5 And then those two numbers recommend to me a range for a
09:18:22 6 sentence. Do you understand that?

09:18:23 7 THE DEFENDANT: Yes, I do.

09:18:25 8 THE COURT: Now, before you're sentenced in
09:18:27 9 this case, you're going to be interviewed by the
09:18:29 10 Probation Department. And they are going to prepare a
09:18:31 11 document called a Presentence Investigation Report that
09:18:35 12 will provide me a lot of information, including about
09:18:37 13 your background, the nature and circumstances of the
09:18:40 14 crime that you pled guilty to. But it also will contain
09:18:43 15 the Probation Department's calculations as to what the
09:18:46 16 correct offense level and criminal history category are
09:18:50 17 under the Sentencing Guidelines. Do you understand
09:18:51 18 that?

09:18:51 19 THE DEFENDANT: Yes, your Honor.

09:18:53 20 THE COURT: It's then my job, as the
09:18:55 21 sentencing judge, to carefully review that document as
09:18:58 22 well as all other materials that I receive in connection
09:19:00 23 with sentencing, and then sentence you to what I believe
09:19:03 24 is just, fair, appropriate and reasonable under the law.
09:19:07 25 Do you understand that?

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09:19:08 2 THE DEFENDANT: Yes, I do, your Honor.

09:19:10 3 THE COURT: Now, you and the government have
09:19:12 4 entered into an agreement, at least in part, on what you
09:19:14 5 believe the correct calculations are under the
09:19:16 6 Sentencing Guidelines. So, in paragraph six, you and
09:19:20 7 the government agree that there is a base offense level,
09:19:22 8 that should be apply here of 6. Do you understand that?

09:19:25 9 THE DEFENDANT: Yes.

09:19:27 10 THE COURT: Now, in paragraph 7, the
09:19:29 11 government is setting forth what it believes are various
09:19:32 12 increases that should occur with the offense level.
09:19:36 13 Specifically, the government is contending that the loss
09:19:40 14 amount, total loss, including relevant conduct, was in
09:19:44 15 excess of 9.5 million dollars, and, therefore, there
09:19:48 16 should be a 20-level offense increase, or 20 -- your
09:19:55 17 offense level should increase by 20. And then the
09:19:59 18 government is also contending that the offense involved
09:20:01 19 more than 10 victims, and, therefore, the offense level
09:20:04 20 should go up by 2; that is, the offense involved what
09:20:08 21 are called sophisticated means, and, therefore, the
09:20:11 22 offense level should up by two. And that you derived
09:20:17 23 more than 1 million dollars in gross receipts from one
09:20:20 24 or more financial institutions and that the offense
09:20:23 25 level should go up by two. But you're not agreeing to

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09:20:30 2 those calculations in this plea agreement. You're
09:20:32 3 reserving your right that some or all of those increases
09:20:35 4 do not apply. Do you understand that?

09:20:36 5 THE DEFENDANT: Yes.

09:20:37 6 THE COURT: And then in paragraph 8, the
09:20:40 7 government is indicating it's position that the offense
09:20:42 8 level should go up by four because you were an organizer
09:20:46 9 or leader of criminal activity that involved five or
09:20:49 10 more participants or was otherwise extensive, but,
09:20:53 11 again, you're reserving your right to argue to me at the
09:20:57 12 time of sentencing that that increase does not apply.
09:21:00 13 Do you understand that?

09:21:01 14 THE DEFENDANT: Yes.

09:21:02 15 THE COURT: So in paragraph nine, it
09:21:04 16 indicates what the offense level would be or the
09:21:07 17 adjusted offense level would be. If the government's
09:21:11 18 position is correct, it would be 36. But, you maintain
09:21:15 19 that the adjusted offense level is a 6, the base offense
09:21:19 20 level that we start out with. Do you understand that?

09:21:22 21 THE DEFENDANT: Yes, I do.

09:21:23 22 THE COURT: And then in paragraph 10, it
09:21:25 23 talks about a reduction in the offense level for
09:21:29 24 acceptance of responsibility. I'll need to determine at
09:21:32 25 the time of sentencing whether or not you should receive

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09:21:35 2 the reduction for acceptance for responsibility. You
09:21:41 3 don't automatically get it just by pleading guilty. If,
09:21:44 4 in fact, you are entitled to a reduction for
09:21:48 5 responsibility, you and the government are both agreeing
09:21:50 6 that you should get that reduction. It depends on what
09:21:53 7 the offense level is, though, in terms of how much of a
09:21:57 8 reduction you would get. If your offense level is only
09:22:02 9 a six, then the -- you would only get a two-level
09:22:12 10 decrease. But if the offense level is what the
09:22:15 11 government contends 36, or the adjusted offense level,
09:22:19 12 you would get a three-level decrease. Do you understand
09:22:21 13 that?

09:22:21 14 THE DEFENDANT: Yes, I do.

09:22:22 15 THE COURT: Now, you both you and the
09:22:26 16 government agree in paragraph 11, that the other number
09:22:30 17 that I have to calculate the criminal history category
09:22:32 18 that that is a category I. That is the lowest level
09:22:35 19 that you can have. Do you understand that?

09:22:37 20 THE DEFENDANT: Yes.

09:22:38 21 THE COURT: So, if you look at paragraph 12
09:22:41 22 A, this sets forth what the Sentencing Guidelines would
09:22:45 23 recommend for a sentence if the government's
09:22:48 24 calculations are correct. With a total offense level of
09:22:52 25 33, a criminal history category of I, and taking into

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09:22:56 2 account the statutory maximum penalty, the Sentencing
09:23:01 3 Guidelines would recommend a prison sentence of 60
09:23:04 4 months or five years, a fine of \$30,000 up to \$250,000,
09:23:09 5 and a supervised release term of one to three years. Do
09:23:12 6 you understand that?

09:23:12 7 THE DEFENDANT: Yes, I do.

09:23:17 8 THE COURT: Now, if your numbers are
09:23:18 9 correct, and this is in 12 B, with an offense level of
09:23:22 10 4, and criminal history category of I, the Sentencing
09:23:25 11 Guidelines would recommend a prison sentence of zero to
09:23:27 12 six months, a fine of \$500 up to \$9,500, and a
09:23:33 13 supervised release term of one year. Do you understand
09:23:34 14 that?

09:23:35 15 THE DEFENDANT: Yes, I do.

09:23:37 16 THE COURT: Now, I want to direct your
09:23:38 17 attention to paragraph 13. Because in this paragraph,
09:23:43 18 you and the government are asking me, at the time of
09:23:45 19 sentencing, to not impose a sentence of incarceration or
09:23:49 20 supervised release. And, first of all, do you
09:23:53 21 understand that?

09:23:53 22 THE DEFENDANT: Yes.

09:23:54 23 THE COURT: Now, I'm not going to decide
09:23:57 24 right now whether or not I'll go along with this, I need
09:24:01 25 to look at, among other things, the Presentence

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09:24:04 2 Investigation Report. But the way it works is if at the
09:24:07 3 time of sentencing, I tell you, no, I won't go along
09:24:10 4 with this, and tell the government that, then at that
09:24:14 5 point, you would have the opportunity to withdraw your
09:24:17 6 plea. Do you understand that?

09:24:18 7 THE DEFENDANT: Yes, I do.

09:24:19 8 THE COURT: But if I do accept this, if I
09:24:22 9 tell you at the time of sentencing, I will not impose an
09:24:27 10 incarceration sentence or a supervised release sentence,
09:24:30 11 then you can't withdraw your guilty plea. Do you
09:24:32 12 understand that?

09:24:32 13 THE DEFENDANT: Yes.

09:24:34 14 THE COURT: Let me just ask the attorneys --
09:24:39 15 well, let me first read the last sentence of paragraph
09:24:43 16 13. It says, "This agreement does not affect the amount
09:24:46 17 of a fine, the amount of restitution, or the length and
09:24:50 18 conditions of a term of probation that may be imposed by
09:24:52 19 the Court at sentencing." So, I want to make sure the
09:24:57 20 record is clear, in terms of probation, I can impose up
09:25:03 21 to five years of probation for the violation. Does
09:25:09 22 everybody agree with that?

09:25:10 23 MR. GLABERSON: That's correct.

09:25:11 24 MR. COHEN: Yes, your Honor.

09:25:12 25 THE COURT: And depending on what the

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09:25:14 2 offense level is, would impact what the Guidelines would
09:25:17 3 recommend. If Mr. Morgan's numbers that are in here are
09:25:20 4 correct, then I think the Sentencing Guidelines would
09:25:23 5 recommend no more than three years of probation. But if
09:25:29 6 the government's calculations are correct, the
09:25:32 7 Sentencing Guidelines would recommend at least one year
09:25:34 8 and no more than five years of probation. Does
09:25:38 9 everybody agree with that?

09:25:39 10 MR. GLABERSON: Yes.

09:25:40 11 MR. KARASZEWSKI: Yes.

09:25:44 12 THE COURT: But, so I can impose a
09:25:47 13 probationary sentence, and that would be consistent with
09:25:50 14 the 11(c)(1)(C) agreement. But, as I understand it, Mr.
09:25:56 15 Morgan would be reserving his right to appeal that
09:25:58 16 sentence. Is that a fair statement?

09:26:06 17 MR. KARASZEWSKI: Yes.

09:26:06 18 THE COURT: I want to hear what the
09:26:08 19 attorneys have to say. Mr. Glaberson is looking at the
09:26:12 20 gallery.

09:26:13 21 MR. GLABERSON: I believe the appellate
09:26:15 22 waiver would cover a probationary sentence and that it
09:26:19 23 would be within or less than what the Guidelines
09:26:21 24 recommend, which would be a term of incarceration.

09:26:26 25 THE COURT: Mr. Cohen, what is your position

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09:26:28 2 on that?

09:26:29 3 MR. COHEN: Looking at the waiver, the
09:26:30 4 appeal waiver language as well, your Honor, before I
09:26:34 5 answer.

09:26:43 6 THE COURT: And let me say, I'm reading
09:26:44 7 this, obviously, Mr. Cohen can advocate for his client
09:26:48 8 on his own, I mean, the appellate waiver says that it
09:26:51 9 applies to a sentence imposed by the Court which falls
09:26:54 10 within or is less than the sentencing range for
09:26:56 11 imprisonment, a fine, and supervised release set forth
09:26:59 12 in paragraph 12 A. So it doesn't address probation. If
09:27:07 13 you want to talk to Mr. Karaszewski, Mr. Glaberson, feel
09:27:10 14 free, as opposed to mouthing.

09:27:14 15 MR. COHEN: That's the way I read it as
09:27:17 16 well, your Honor.

09:27:42 17 MR. GLABERSON: Judge, the government's
09:27:44 18 position is, when it says "falls within or is less than
09:27:47 19 the sentencing range of imprisonment, fine or supervised
09:27:52 20 release set forth above," a sentence of probation would
09:27:54 21 be within or less than either the imprisonment or
09:27:58 22 supervised release terms, that it's a, essentially, a
09:28:04 23 lesser sentence than a term of imprisonment is a
09:28:06 24 sentence of probation.

09:28:10 25 THE COURT: What is the defense position on

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09:28:13 2 that? I mean, I think we need to have some
09:28:17 3 understanding as to what the appellate waiver is before
09:28:22 4 Mr. Morgan goes forward with any plea.

09:28:25 5 MR. COHEN: Your Honor, I think probation is
09:28:27 6 different from -- it is, we all know, from supervised
09:28:30 7 release, I read the terms of the agreement, it does
09:28:33 8 allow the appeal rights that your Honor had earlier
09:28:37 9 enumerated, depending on the sentence of probation,
09:28:40 10 which differs from supervised release. So I think that
09:28:43 11 is the way the agreement reads. As your Honor had
09:28:48 12 earlier, I think, as your Honor had interpreted it.

09:28:59 13 THE COURT: I mean, I'm not sure why the
09:29:03 14 government believes that a sentence of time served with,
09:29:07 15 let's say, one year of supervised release to follow
09:29:10 16 would be a lesser sentence than a sentence of five years
09:29:14 17 probation. Whereas, you know, if you violate probation,
09:29:18 18 you're then looking at the potential maximum penalties
09:29:22 19 that you were originally facing as originally charged as
09:29:27 20 opposed to lesser penalties for a violation of
09:29:30 21 supervised release.

09:29:58 22 MR. GLABERSON: I guess, to the extent it
09:30:00 23 would come up, were any appeal sought, the government's
09:30:04 24 position would be that by waiving his right to appeal a
09:30:07 25 six-month prison sentence, that necessarily implies that

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09:30:11 2 he would also waive a lesser sentence, a sentence of
09:30:16 3 probation.

09:30:16 4 THE COURT: But the defense disagrees with
09:30:18 5 that, and before we go forward with a plea and I ask Mr.
09:30:22 6 Morgan questions about him knowingly waiving certain
09:30:27 7 rights to appeal, I want to make sure everybody is on
09:30:29 8 the same page. And it doesn't sound as though that is
09:30:32 9 the case right now. So maybe we could take a break and
09:30:37 10 counsel could discuss this and see if you can come to an
09:30:42 11 agreement.

09:30:43 12 MR. GLABERSON: Yes.

09:30:44 13 THE COURT: Okay. All right.

09:31:01 14 (Whereupon, there was a break in the
09:31:01 15 proceeding.)

10:18:07 16 THE COURT: All right. We are back on the
10:18:08 17 record with Mr. Glaberson, Mr. Karaszewski, Mr. Cohen,
10:18:12 18 Mr. Sun, Ms. Denerstein, Mr. Morgan. We took a break
10:18:17 19 when I had raised a question about the scope of the
10:18:20 20 appellate waiver. So, has there been any resolution?

10:18:25 21 MR. KARASZEWSKI: Judge, if you permit me to
10:18:27 22 speak.

10:18:27 23 THE COURT: Yes, I'll permit you to speak,
10:18:29 24 Mr. Karaszewski.

10:18:30 25 MS. KARASZEWSKI: Thank you, your Honor.

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10:18:31 2 So, maybe we can resolve it this way. We've had -- I've
10:18:36 3 discussed with defense counsel and Mr. Glaberson, and I
10:18:41 4 have discussed with the defense counsel, that the
10:18:44 5 government -- the government reads the appellate waiver,
10:18:48 6 paragraph 30, of the plea agreement, that a sentence of
10:18:52 7 probation would be any component of a sentence which
10:18:58 8 falls within or is less than the sentencing range for
10:19:03 9 imprisonment set forth in paragraph 12 A, which is, that
10:19:07 10 sentencing range for imprisonment is 60 months. So,
10:19:11 11 it's a sentence of probation, by any measure, is a
10:19:18 12 sentence that is less than 60 months imprisonment.
10:19:25 13 Understanding, Judge, that the appellate -- neither the
10:19:30 14 appellate waiver nor paragraph 12 A, says anything about
10:19:34 15 probation. And I'm -- my understanding is of defense
10:19:40 16 counsel, they can obviously speak for themselves, is
10:19:44 17 that it doesn't say anything about probation, so that if
10:19:47 18 your Honor imposes a sentence of probation, they would
10:19:49 19 be able to file a Notice of Appeal and argue an appeal
10:19:53 20 consistent with the appellate waiver.

10:19:56 21 Now, that, obviously, would be a matter for
10:20:00 22 the Second Circuit to determine whether or not Mr.
10:20:06 23 Morgan has waived his right to appeal a sentence of
10:20:09 24 probation. I would propose, Judge, that we can proceed
10:20:14 25 today with the understanding that if Mr. Morgan were to

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10:20:23 2 appeal a sentence of probation, that we would retain our
10:20:29 3 right to attempt to enforce the waiver. I think that is
10:20:34 4 sufficiently -- it sufficiently advises Mr. Morgan of
10:20:41 5 his rights with regard to that, that that is the
10:20:49 6 government's position, that if we were to leave it at
10:20:51 7 that, that that would not affect the knowing and
10:20:54 8 voluntary entering of the plea here.

10:20:57 9 THE COURT: The only, I guess, well, not the
10:21:00 10 only, but an issue with that, and I'll let Mr. Cohen
10:21:04 11 advise us as to the defense position, the issue I see
10:21:08 12 with that is that typically when I take a plea, and I
10:21:11 13 address the appellate waiver, I very clearly go through
10:21:15 14 with the defendant what he is waiving. And, here, I
10:21:20 15 would not be having Mr. Morgan, on the record, concede
10:21:24 16 that he is waiving the right to appeal a probationary
10:21:28 17 sentence. So, I don't know how it realistically can be
10:21:35 18 argued that he waives a probationary sentence if I don't
10:21:40 19 have the colloquy with him about that.

10:21:45 20 MS. KARASZEWSKI: I understand that, Judge.
10:21:47 21 I will say that this has never come up before.

10:21:51 22 THE COURT: Well, it came up last week to
10:21:53 23 some degree.

10:21:54 24 MS. KARASZEWSKI: I understand that, Judge.

10:21:55 25 THE COURT: The difference last week is that

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10:21:58 2 there wasn't this language of the 11(c)(1)(C) with no
10:22:01 3 supervised release. So, I think --

10:22:04 4 MS. KARASZEWSKI: I'm sorry, Judge.

10:22:05 5 THE COURT: I think everybody agreed last
10:22:08 6 week, but it was a little up in the air, but I think
10:22:13 7 that, my recollection is, there was a general consensus
10:22:18 8 that a probationary term that fit within the time frame
10:22:22 9 of the supervised release term that was set forth in the
10:22:27 10 plea agreements last week would be consistent with the
10:22:31 11 terms of the plea agreement. But the difference was
10:22:33 12 that there wasn't an 11(c)(1)(C) agreement for no
10:22:37 13 supervised release. I think that is what complicates
10:22:43 14 this.

10:22:43 15 MS. KARASZEWSKI: I understand that, Judge.
10:22:44 16 And let me amend what I said. This hasn't come up in
10:22:48 17 any other case that I've ever handled. I mean, just
10:22:52 18 because, I think, the position has always been, and the
10:22:55 19 understanding has always been, that a sentence of
10:22:57 20 probation is a component of a sentence that is less than
10:23:01 21 a term of imprisonment. I don't think that is an
10:23:06 22 illogical way of looking at it. I guess what -- you're
10:23:15 23 right, Judge, that we don't have a term of -- the
10:23:23 24 (c)(1)(C) allows Mr. Morgan to withdraw his plea if the
10:23:29 25 Court were to determine that he should be sentenced to a

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10:23:31 2 term of probation and a term of supervised release.

10:23:33 3 THE COURT: Not probation.

10:23:34 4 MS. KARASZEWSKI: I'm sorry, a term of
10:23:36 5 imprisonment and supervised release. Thank you, Judge.
10:23:41 6 But, so you don't have kind of that overlay of the
10:23:45 7 supervised release to kind of determine what the waiver
10:23:47 8 is.

10:23:48 9 THE COURT: Right. I think, if, at the time
10:23:50 10 of sentencing, I say I'm going to accept the plea
10:23:52 11 agreement and impose -- let me rephrase it. If at the
10:23:55 12 time of sentencing I say, I'm going to impose a
10:23:58 13 time-served sentence and two years supervised release, I
10:24:02 14 can't do that under the 11(c)(1)(C). I wouldn't be
10:24:05 15 accepting the plea agreement. Mr. Morgan would have the
10:24:10 16 right to withdraw his plea. But if I say, at the time
10:24:14 17 of sentencing, I'm going to impose a two-year
10:24:19 18 probationary sentence, that is consistent with the
10:24:21 19 11(c)(1)(C), I guess, I'm reading this, my initial read,
10:24:25 20 I understand what you're saying, that probation is less
10:24:27 21 than a five-year prison sentence, obviously, but I think
10:24:32 22 what complicates this is the no supervised release term.
10:24:35 23 So I think there would be an argument, at least, that
10:24:39 24 Mr. Morgan could appeal a two-year probationary
10:24:42 25 sentence.

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10:24:42 2 I guess, Mr. Cohen or Ms. Denerstein, what
10:24:48 3 is the defense position on this?

10:24:51 4 MS. DENERSTEIN: We agree with the Court.
10:24:52 5 That should your Honor impose a sentence of probation,
10:24:55 6 that Mr. Morgan would not have waived his right to
10:24:59 7 appeal. We are prepared to permit the government to
10:25:02 8 argue that what we would suggest a strained reading of
10:25:09 9 paragraph 30 provide such a waiver, and we would oppose,
10:25:14 10 but if you were to ask Mr. Morgan if he were waiving his
10:25:18 11 right to a term of probation, he would answer no. So,
10:25:21 12 we're willing to proceed with that understanding.

10:25:23 13 MS. KARASZEWSKI: And that would be a
10:25:24 14 matter, if it came to that, Judge, we would argue that
10:25:27 15 before the Second Circuit and we would have them decide.

10:25:30 16 THE COURT: Right. But, just so there is
10:25:32 17 the understanding, I'm not going to be -- I'll ask Mr.
10:25:35 18 Morgan the questions, but I'm anticipating the answers
10:25:38 19 are going to be that he is not willing to waive a
10:25:42 20 probationary sentence.

10:25:44 21 MS. KARASZEWSKI: Yes. And if that is the
10:25:46 22 end result of today's proceeding, certainly if this ever
10:25:49 23 gets to the Second Circuit, the record will be made of
10:25:53 24 his understanding of the waiver, and we would proceed
10:25:56 25 accordingly, Judge.

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10:25:57 2 THE COURT: Okay. So with that, Ms.

10:25:59 3 Denerstein, defense is ready to proceed?

10:26:03 4 MS. DENERSTEIN: Yes, your Honor, we are.

10:26:03 5 THE COURT: Okay. And, Mr. Glaberson, the
10:26:06 6 government is ready to proceed?

10:26:07 7 MR. GLABERSON: Yes, your Honor.

10:26:07 8 THE COURT: Okay. Mr. Morgan, I'm going to
10:26:10 9 remind you, you are still under oath. And before we got
10:26:14 10 sidetracked, I was talking to you about the 11(c)(1)(C)
10:26:17 11 agreement. So let me make sure the record is clear.
10:26:20 12 You and the government are asking me, at the time of
10:26:23 13 sentencing, to impose a no incarceration and no
10:26:26 14 supervised release sentence. And if I go along with
10:26:30 15 that, you cannot withdraw your guilty plea. Do you
10:26:33 16 understand that?

10:26:33 17 THE DEFENDANT: Yes.

10:26:34 18 THE COURT: In addition, you're agreeing
10:26:36 19 that that 11(c)(1)(C) agreement does not affect the
10:26:41 20 amount of a fine, the amount of restitution, or the
10:26:45 21 length and conditions of a term of probation that may be
10:26:48 22 imposed by the Court. In other words, I can impose a
10:26:52 23 fine up to the maximum amount allowed under the law,
10:26:56 24 which is \$250,000, I can impose restitution, and I can
10:27:02 25 impose a probationary sentence, and that would not allow

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10:27:06 2 you to withdraw from the guilty plea. Do you understand
10:27:09 3 that?

10:27:09 4 THE DEFENDANT: Yes, I do.

10:27:11 5 THE COURT: But let me talk to you about the
10:27:14 6 appellate waiver. And this is in paragraph 30 of the
10:27:26 7 plea agreement. You tell me when you have it there in
10:27:34 8 front of you.

10:27:36 9 THE DEFENDANT: Yes, I'm here. Thank you.

10:27:37 10 THE COURT: So, paragraph 30 states that
10:27:39 11 you're agreeing to waive your right to appeal or
10:27:42 12 collaterally attack any component of a sentence imposed
10:27:46 13 by the Court which falls within or is less than the
10:27:49 14 sentencing range for imprisonment, a fine, and
10:27:52 15 supervised release set forth in paragraph 12 A. Do you
10:27:55 16 understand that?

10:27:55 17 THE DEFENDANT: Yes, I do, your Honor.

10:27:57 18 THE COURT: And you've talked to your
10:27:58 19 attorneys about that?

10:28:00 20 THE DEFENDANT: Yes.

10:28:00 21 THE COURT: And you've heard the discussions
10:28:02 22 that have gone on in court today about this appellate
10:28:06 23 waiver?

10:28:06 24 THE DEFENDANT: Yes.

10:28:07 25 THE COURT: Now, you understand that if you

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10:28:09 2 were to go to trial and you were convicted by a jury and
10:28:12 3 then I sentenced you, you would have the right to appeal
10:28:15 4 that conviction and any sentence that is imposed to the
10:28:18 5 court above me. It's called the Second Circuit Court of
10:28:22 6 Appeals. Do you understand that?

10:28:22 7 THE DEFENDANT: Yes, I do.

10:28:23 8 THE COURT: You also would have some limited
10:28:25 9 rights to what they call "collaterally attack" that
10:28:28 10 conviction and any sentence that is imposed by bringing
10:28:30 11 a proceeding before the Court where you were convicted,
10:28:33 12 such as a habeas corpus proceeding. Do you understand
10:28:36 13 that?

10:28:36 14 THE DEFENDANT: Yes.

10:28:37 15 THE COURT: But you're agreeing, pursuant to
10:28:39 16 the terms and conditions of this plea agreement, that if
10:28:42 17 I sentence you within or less than a prison sentence of
10:28:46 18 five years, a fine of \$30,000 up to \$250,000, and a
10:28:54 19 supervised release term of one to three years, you're
10:28:57 20 waiving any right to appeal or collaterally attack that
10:28:59 21 sentence. Do you understand that?

10:29:00 22 THE DEFENDANT: Yes, your Honor.

10:29:02 23 THE COURT: Now, there is a disagreement
10:29:04 24 between you and the government as to whether or not that
10:29:06 25 appellate waiver applies to a probationary sentence that

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10:29:10 2 is imposed. And it's my understanding that you're not
10:29:13 3 waiving the right to appeal a probationary sentence. Is
10:29:18 4 that correct?

10:29:18 5 THE DEFENDANT: That's correct.

10:29:19 6 THE COURT: Do you have any questions for me
10:29:20 7 or your attorneys about anything that we've covered up
10:29:23 8 to this point?

10:29:24 9 THE DEFENDANT: No, I don't.

10:29:25 10 THE COURT: All right. Let me talk to you
10:29:28 11 about paragraph 18 of the plea agreement.

10:29:41 12 THE DEFENDANT: Okay.

10:29:42 13 THE COURT: So you're agreeing, based on the
10:29:44 14 government's agreement to dismiss the charges in the
10:29:51 15 pending indictment in this case, that you're going to
10:29:57 16 waive any statute of limitations defense to the charge
10:30:00 17 that is in the Superseding Information. In other words,
10:30:03 18 you're not objecting to, on timeliness grounds, to the
10:30:08 19 Superseding Information being filed. Do you understand
10:30:09 20 that?

10:30:09 21 THE DEFENDANT: Yes, I do.

10:30:11 22 THE COURT: And then let me talk to you
10:30:13 23 about in paragraph 21 of the plea agreement. You're
10:30:22 24 acknowledging that you're aware of investigations,
10:30:29 25 criminal investigations, by the U.S. Department of

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10:30:36 2 Justice Criminal Division, Fraud Section, and it's your
10:30:38 3 understanding, as well as the government's, that upon
10:30:41 4 your entry of a guilt plea, the fraud section will
10:30:45 5 further decline to investigate or prosecute you in
10:30:48 6 connection with those investigations. Do you understand
10:30:50 7 that?

10:30:50 8 THE DEFENDANT: Yes, I do.

10:30:51 9 THE COURT: Let me talk to you about the
10:30:54 10 restitution provisions. In paragraph 23, you're
10:30:59 11 acknowledging that I may require restitution as part of
10:31:03 12 any sentence that is imposed in this case, and that you
10:31:06 13 cannot withdraw your guilty plea because of that. But
10:31:11 14 you're also, and the government is also, acknowledging
10:31:14 15 that the loan to ESL Federal Credit Union referenced in
10:31:26 16 the factual basis of the plea agreement, which we'll get
10:31:30 17 to in a minute, has been repaid in full and there is no
10:31:34 18 restitution due. Do you understand that?

10:31:35 19 THE DEFENDANT: Yes, I do.

10:31:36 20 THE COURT: And now any monetary -- let me
10:31:39 21 talk to you about paragraph 25. Any monetary penalties
10:31:42 22 that are imposed at the time of sentencing, you're
10:31:47 23 acknowledging that those are due and payable in full
10:31:51 24 immediately and may be subject to immediate enforcement
10:31:56 25 and subject to an offset in the event that there is any

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10:32:01 2 returned property. Do you understand that?

10:32:03 3 THE DEFENDANT: Yes.

10:32:06 4 THE COURT: And then in paragraph 26, you're
10:32:08 5 agreeing to deposit the maximum potential fine, which is
10:32:14 6 \$250,000, into a third-party escrow account, mutually
10:32:18 7 agreed upon with the government, at least 10 days prior
10:32:21 8 to sentencing, and you're reserving your right to
10:32:23 9 advocate for a fine under the statutory maximum. Do you
10:32:28 10 understand that?

10:32:28 11 THE DEFENDANT: Yes, I do.

10:32:31 12 THE COURT: Let me talk to you about the
10:32:32 13 forfeiture provisions. As you know, there are, or have
10:32:37 14 been, one civil forfeiture case pending right now, there
10:32:41 15 have been several civil forfeiture cases commenced in
10:32:44 16 connection with this matter, and part of this plea
10:32:53 17 agreement involves you and the government agreeing to
10:32:55 18 execute a civil settlement and forfeiture agreement that
10:33:01 19 has been negotiated for those civil forfeiture matters.
10:33:06 20 And the agreement is that if I do not go along with
10:33:11 21 this, if I don't so order this settlement and forfeiture
10:33:14 22 agreement, you're retaining your right to withdraw, as
10:33:18 23 is the government, retaining its right to withdraw, from
10:33:22 24 the plea agreement. Do you understand that?

10:33:23 25 THE DEFENDANT: Yes, I do, your Honor.

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10:33:24 2 THE COURT: And you're also agreeing to
10:33:26 3 execute any other documents reasonably necessary to
10:33:29 4 resolve the civil litigation in accordance with the
10:33:32 5 settlement and forfeiture agreement. Do you understand
10:33:34 6 that?

10:33:34 7 THE DEFENDANT: Yes.

10:33:38 8 THE COURT: Why don't we turn to section 10
10:33:40 9 of the agreement?

10:33:49 10 MR. COHEN: Roman Numeral X, your Honor?

10:33:51 11 THE COURT: Starts with paragraph 33. Do
10:33:59 12 you have that there in front of you?

10:34:01 13 THE DEFENDANT: Yes, I do.

10:34:02 14 THE COURT: So paragraph 33 includes your
10:34:04 15 agreement not to bring a motion for attorney fees and
10:34:08 16 other litigation expenses under the Hyde Amendment on
10:34:11 17 the ground that the position of the United States was
10:34:15 18 vexatious, frivolous or in bad faith with respect to the
10:34:18 19 counts of conviction or any other count or charge that
10:34:22 20 has been dismissed or which may be dismissed in the 2018
10:34:29 21 indictment, the related civil forfeiture actions, or
10:34:32 22 pursuant to this agreement. Do you understand that?

10:34:35 23 THE DEFENDANT: Yes, I do.

10:34:35 24 THE COURT: You're also acknowledging that
10:34:37 25 you are not a "prevailing party" within the meaning of

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10:34:43 2 the Hyde Amendment as to those various matters. Do you
10:34:46 3 understand that?

10:34:46 4 THE DEFENDANT: Yes, I do.

10:34:47 5 THE COURT: And you're waiving your right to
10:34:48 6 seek any attorney fees or other litigations under that
10:34:51 7 statute. Do you understand that?

10:34:52 8 THE DEFENDANT: Yes.

10:34:54 9 THE COURT: And then, in addition, you're
10:34:56 10 agreeing to withdraw the pending motion for
10:34:59 11 reconsideration that was filed in connection with the
10:35:02 12 2018 indictment, and not re-file it or renew it, unless,
10:35:08 13 for some reason, the plea agreement is not accepted or
10:35:16 14 your plea is not accepted pursuant to the various
10:35:19 15 provisions that are in paragraph 34(a). In other words,
10:35:23 16 there are various options by which there is a potential,
10:35:26 17 at least, that the plea agreement would not be accepted
10:35:29 18 or you'd be able to withdraw your guilty plea or
10:35:32 19 withdraw from the plea agreement. In the event that
10:35:35 20 occurs, you would be able to renew your motion for
10:35:41 21 reconsideration. But, if it doesn't occur, that is the
10:35:44 22 end of the story, at least, in terms of your motion for
10:35:48 23 reconsideration. Do you understand that?

10:35:48 24 THE DEFENDANT: Yes, I do.

10:35:57 25 THE COURT: All right. Let me talk to you,

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10:36:00 2 Mr. Morgan, about what it means to waive indictment,
10:36:02 3 because the Superseding Information contains a felony
10:36:05 4 charge that is different than what you're currently
10:36:08 5 charged with. In order for you to be charged with this
10:36:11 6 crime, normally the case would have to be presented to a
10:36:15 7 grand jury and the grand jury could vote to charge you
10:36:17 8 with the crime that you're going to be pleading guilty
10:36:19 9 to or the grand jury could vote to dismiss the charge
10:36:21 10 against you. In order to have -- well, waive
10:36:26 11 presentation of the case to a grand jury, you need to
10:36:30 12 agree to be charged by a Superseding Information as
10:36:33 13 opposed to an indictment. And to do that, you need to
10:36:37 14 waive presentation of the case to a grand jury. Do you
10:36:40 15 understand that?

10:36:40 16 THE DEFENDANT: Yes, I do.

10:36:41 17 THE COURT: And have you talked to your
10:36:43 18 attorneys about that?

10:36:44 19 THE DEFENDANT: Yes.

10:36:44 20 THE COURT: In order to waive indictment,
10:36:46 21 you need to sign the Waiver of Indictment form, but when
10:36:48 22 you do that, you're telling me in writing that you fully
10:36:51 23 understand your right to have the case presented to a
10:36:53 24 grand jury and you're agreeing to be charged by the
10:36:57 25 Superseding Information. Do you understand that?

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10:36:58 2 THE DEFENDANT: Yes.

10:36:58 3 THE COURT: All right. Then I ask you to
10:37:00 4 sign the Waiver of Indictment form now. Thank you. And
10:37:04 5 then once it's signed, you can hand it up along with --
10:37:08 6 I don't think I have the information. Do you have the
10:37:10 7 original information, Mr. Glaberson?

10:37:12 8 MR. GLABERSON: It's on counsel table with
10:37:13 9 the waiver.

10:38:14 10 THE COURT: Okay. All right. The record
10:38:15 11 should reflect, I have the original Waiver of Indictment
10:38:17 12 form as well as two copies signed by Mr. Morgan and Mr.
10:38:21 13 Cohen. I do find, Mr. Morgan, based on your answers to
10:38:25 14 my questions and based on your demeanor here in court
10:38:27 15 today and based on you signing this Waiver of Indictment
10:38:29 16 form, that you are waiving indictment in a knowing,
10:38:32 17 voluntary and intelligent manner. So, I will sign the
10:38:36 18 form and we will arrange for it to be filed in our
10:38:39 19 clerk's office. So, what that means is that you're now
10:38:42 20 accused by way of a Superseding Information signed by
10:38:46 21 Mr. Glaberson on behalf of the United States Attorney
10:38:49 22 with one count of conspiracy to commit wire fraud in
10:38:54 23 violation of Title 18 U.S.C. Section 371.

10:39:00 24 Mr. Cohen, do you have a copy of the
10:39:03 25 Information?

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10:39:03 2 MR. COHEN: I do, your Honor.

10:39:04 3 THE COURT: Do you waive a full reading?

10:39:06 4 MR. COHEN: Yes.

10:39:06 5 THE COURT: Mr. Morgan, I'm going to enter a
10:39:08 6 preliminary plea of not guilty on your behalf because,
10:39:10 7 before I ask you whether or not you want to plead
10:39:13 8 guilty, I still need to go over some other matters with
10:39:16 9 you. I want to talk to you now about the rights that
10:39:19 10 you're going to be giving up by pleading guilty as
10:39:21 11 opposed to going to trial.

10:39:22 12 First of all, do you understand that you do
10:39:24 13 not need to plead guilty to anything. If you wanted to,
10:39:27 14 you could continue with the not guilty pleas that have
10:39:31 15 been entered on your behalf in this case and go to a
10:39:33 16 trial in front of a jury. Do you understand that?

10:39:35 17 THE DEFENDANT: Yes, I do.

10:39:36 18 THE COURT: And, at that trial, as well as
10:39:39 19 at all critical stages of this proceeding, you would
10:39:42 20 have the right to representation by counsel. If you
10:39:45 21 could no longer afford an attorney, you would have the
10:39:48 22 right to have an attorney appointed to represent you.
10:39:50 23 Do you understand that?

10:39:51 24 THE DEFENDANT: Yes.

10:39:51 25 THE COURT: It would be up to the government

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10:39:52 2 at the trial to prove its case against you. You would
10:39:56 3 not have the burden to prove anything. In other words,
10:39:59 4 the government would be the only party that would have
10:40:01 5 the obligation to put in proof, present evidence,
10:40:04 6 present proof. Do you understand that?

10:40:08 7 THE DEFENDANT: Yes, I do.

10:40:08 8 THE COURT: Your attorneys, on your behalf,
10:40:10 9 could challenge any of the evidence that the government
10:40:12 10 sought to introduce, and they could confront and cross
10:40:15 11 examine any of the witnesses who testified. Do you
10:40:17 12 understand that?

10:40:17 13 THE DEFENDANT: Yes, I do.

10:40:18 14 THE COURT: You'd have the right, if you
10:40:20 15 wanted to, to testify on your own behalf or you could
10:40:22 16 chose not to do that. Do you understand that?

10:40:26 17 THE DEFENDANT: Yes, I do.

10:40:27 18 THE COURT: You could also put in a defense
10:40:28 19 case. You could call witnesses, compel them to attend
10:40:34 20 the trial, put in evidentiary proof, or you could chose
10:40:36 21 not to do that. Do you understand that?

10:40:37 22 THE DEFENDANT: Yes.

10:40:37 23 THE COURT: And if you chose not to testify
10:40:38 24 or if you chose not to put in any type of a defense
10:40:41 25 case, I would specifically instruct the jury that they

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10:40:44 2 could not in any way consider that as evidence of your
10:40:46 3 guilt or evidence of anything else, for that matter. Do
10:40:49 4 you understand that?

10:40:49 5 THE DEFENDANT: Yes, I do, your Honor.

10:40:52 6 THE COURT: In addition, the jury would have
10:40:54 7 to consider each charge against you separately and find
10:40:58 8 that the government had proven each element of the
10:41:01 9 charge under consideration beyond a reasonable doubt.
10:41:05 10 Do you understand that?

10:41:06 11 THE DEFENDANT: Yes.

10:41:07 12 THE COURT: And if you look at paragraph
10:41:09 13 three of the plea agreement.

10:41:16 14 THE DEFENDANT: I'm sorry.

10:41:17 15 THE COURT: You tell me when you have it
10:41:18 16 there in front of you.

10:41:21 17 THE DEFENDANT: Okay.

10:41:27 18 THE COURT: All right. So paragraph three
10:41:29 19 sets forth the elements that the government would have
10:41:31 20 to prove beyond a reasonable doubt before you could be
10:41:33 21 convicted of the charge that is contained in the
10:41:38 22 Superseding Information. First, that two or more
10:41:41 23 persons entered into an unlawful agreement to commit an
10:41:44 24 offense against the United States as charged in the
10:41:48 25 Superseding Information, to wit, knowingly devising a

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10:41:51 2 scheme to defraud and to obtain money and property by
10:41:54 3 means of false and fraudulent pretenses, representations
10:41:58 4 and promises, and for the purpose of executing the
10:42:01 5 scheme, used or caused to be used, wire communications
10:42:05 6 and interstate commerce. Second, that you were a party
10:42:09 7 to or a member of that agreement. Third, that you
10:42:12 8 joined the agreement or conspiracy knowing of its
10:42:16 9 objective to commit an offense against the United States
10:42:19 10 and intending to join together with at least one other
10:42:22 11 alleged co-conspirator to achieve that objective. That
10:42:29 12 is, you and at least one other alleged co-conspirator,
10:42:32 13 shared a unity of purpose and intent to achieve a common
10:42:38 14 goal or objective to commit an offense against the
10:42:41 15 United States. Fourth, that at some time during the
10:42:46 16 existence of the agreement or conspiracy, at least one
10:42:50 17 of the members of the conspiracy committed at least one
10:42:53 18 overt act in order to further the objective of the
10:42:56 19 agreement. And fifth, that the overt act was committed
10:43:01 20 to further some object of the conspiracy. Do you
10:43:05 21 understand the government would have to prove each one
10:43:07 22 of those elements beyond a reasonable doubt before a
10:43:10 23 jury could convict you of the charge in the Superseding
10:43:13 24 Information?

10:43:16 25 THE DEFENDANT: Yes, I do.

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10:43:17 2 THE COURT: In addition, the jury would have
10:43:19 3 to be unanimous in its verdict. In other words, all 12
10:43:22 4 people would have to be in agreement that the government
10:43:24 5 met its burden of proof. Do you understand that?

10:43:25 6 THE DEFENDANT: Yes, I do, your Honor.

10:43:27 7 THE COURT: Do you understand that you're
10:43:28 8 going to be giving up these rights?

10:43:30 9 THE DEFENDANT: Yes, I do.

10:43:31 10 THE COURT: Do you understand that a plea of
10:43:32 11 guilty is the same as if a jury found you guilty after
10:43:35 12 trial?

10:43:35 13 THE DEFENDANT: Yes.

10:43:37 14 THE COURT: Now, with a felony conviction,
10:43:38 15 you may lose certain civil rights, such as the right to
10:43:42 16 vote, the right to hold certain licenses or offices, the
10:43:45 17 right to sit on a jury. Do you understand that?

10:43:47 18 THE DEFENDANT: Yes.

10:43:48 19 THE COURT: Have any other promises been
10:43:50 20 made to you to get you to plead guilty, other than those
10:43:53 21 that are contained in this plea agreement?

10:43:55 22 THE DEFENDANT: No, your Honor.

10:43:55 23 THE COURT: Has anyone threatened you or
10:43:57 24 coerced you in any way to get you to plead guilty?

10:44:00 25 THE DEFENDANT: No, your Honor.

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10:44:00 2 THE COURT: Are you pleading guilty because,
10:44:03 3 based on your discussions with your attorney, you
10:44:05 4 believe it's in your best interest to do so?

10:44:07 5 THE DEFENDANT: Yes, your Honor.

10:44:07 6 THE COURT: Are you pleading guilty because
10:44:09 7 you are guilty?

10:44:10 8 THE DEFENDANT: Yes.

10:44:11 9 THE COURT: Have you answered my questions
10:44:13 10 truthfully?

10:44:13 11 THE DEFENDANT: Yes, your Honor.

10:44:14 12 THE COURT: Do you have any questions for me
10:44:16 13 or your attorneys?

10:44:16 14 THE DEFENDANT: No.

10:44:17 15 THE COURT: All right. Let me direct you to
10:44:20 16 the last numbered paragraph of the plea agreement,
10:44:28 17 paragraph 35. What I'm going to do, Mr. Morgan, is I'm
10:44:41 18 going to read this paragraph into the record. You can
10:44:43 19 follow along on your copy, but I want you to listen to
10:44:46 20 me, too, because after I read it, I'm going to ask
10:44:49 21 whether or not it's true. It states as follows: "This
10:44:51 22 plea agreement represents the total agreement between
10:44:54 23 the defendant, Robert Morgan, and the government. There
10:44:58 24 are no promises made by anyone, other than those
10:45:00 25 contained in this agreement. This agreement supersedes

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10:45:04 2 any other prior agreements, written or oral, entered
10:45:07 3 into between the government and the defendant."

10:45:10 4 Is that true.

10:45:10 5 THE DEFENDANT: Yes.

10:45:11 6 THE COURT: All right. I'm going to do the
10:45:13 7 same thing with the paragraph on the next page, which
10:45:18 8 states as follows: "I have read this agreement, which
10:45:22 9 consists of pages 1 through 14. I have had a full
10:45:25 10 opportunity to discuss this agreement with my attorneys,
10:45:28 11 Joel M. Cohen Esq., and Mylen L. Denerstein Esq. I
10:45:34 12 agree that it represents the total agreement reached
10:45:36 13 between me and the government. No promises or
10:45:39 14 representations have been made to me, other than what is
10:45:42 15 contained in this agreement. I understand all of the
10:45:46 16 consequences of my plea of guilty. I fully agree with
10:45:49 17 the contents of this agreement. I am signing this
10:45:52 18 agreement voluntarily and of my own free will."

10:45:55 19 Is that true, sir?

10:45:56 20 THE DEFENDANT: Yes.

10:45:56 21 THE COURT: Okay. The next step then is for
10:45:59 22 you to sign the plea agreement. But understand, when
10:46:01 23 you sign this, you're telling me in writing that you
10:46:03 24 fully understand all of the terms and conditions and
10:46:05 25 you're entering into it in a knowing, voluntary and

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10:46:09 2 intelligent manner." Is that true?

10:46:10 3 THE DEFENDANT: Yes.

10:46:11 4 THE COURT: Then I ask you to sign the plea
10:46:13 5 agreement now. Once it's fully executed, if you could
10:46:21 6 hand it up, Mr. Cohen.

10:46:22 7 MR. COHEN: Will do.

10:46:23 8 THE COURT: Thank you. All right. The
10:46:52 9 record should reflect that I have in front of me the
10:46:54 10 original plea agreement. It has been signed by Mr.
10:46:57 11 Glaberson on behalf of the U.S. attorney, and it's been
10:47:00 12 signed by Mr. Morgan and witnessed by Mr. Cohen and Ms.
10:47:04 13 Denerstein. I am satisfied, Mr. Morgan, based on your
10:47:08 14 answers to my questions and based on your demeanor here
10:47:10 15 in court today, and based on you signing this plea
10:47:13 16 agreement, that you are entering into this plea in a
10:47:15 17 knowing, voluntary and intelligent manner.

10:47:19 18 Now, before I can accept your plea, though,
10:47:21 19 you're going to have to tell me what you did. So, why
10:47:24 20 don't you, if you would -- do you have another copy of
10:47:26 21 the plea agreement there in front of you?

10:47:30 22 THE DEFENDANT: Yes.

10:47:30 23 THE COURT: Why don't you turn to paragraph
10:47:32 24 four of the plea agreement? All right. I'll walk
10:47:45 25 through this with you, but could you tell me, first of

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10:47:47 2 all, in your own words, what did you do that is causing
10:47:51 3 you to plead guilty?

10:47:51 4 THE DEFENDANT: I agreed, with others, to
10:47:53 5 submit to ESL Federal Credit Union, documents that
10:47:56 6 contained inaccurate construction contract price
10:48:00 7 information for Ellison Heights project in order to get
10:48:05 8 excess loan funds and evade the equity requirements of
10:48:09 9 the construction loan.

10:48:09 10 THE COURT: Okay. And did this occur in or
10:48:13 11 around September of 2016 in the Western District of New
10:48:18 12 York?

10:48:18 13 THE DEFENDANT: Yes, your Honor.

10:48:20 14 THE COURT: And do you agree that you agreed
10:48:22 15 with others to obtain money or property by means of
10:48:26 16 inaccurate representations transmitted by wire in
10:48:30 17 violation of Title 18 U.S.C. Section 371?

10:48:33 18 THE DEFENDANT: Yes.

10:48:35 19 THE COURT: Now, paragraph 4(b0 describes
10:48:38 20 Ellison Heights Apartments, LLC as a Limited Liability
10:48:45 21 Company and describes why it was formed. Is that
10:48:50 22 description accurate?

10:48:51 23 THE DEFENDANT: Yes, your Honor.

10:48:51 24 THE COURT: And you were the manager of
10:48:53 25 Morgan Ellison Heights, LLC as well as the -- well, let

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10:48:58 2 me rephrase that. You were the manager of Morgan
10:49:02 3 Ellison Heights, LLC, which was the majority owner of
10:49:06 4 Ellison Heights Apartments, LLC. Is that correct?

10:49:08 5 THE DEFENDANT: That's correct, your Honor.

10:49:19 6 THE COURT: Do you agree with paragraph
10:49:22 7 4(b)(iv), which says that you saw and were aware of
10:49:25 8 documents reflecting inaccurate information and agreed
10:49:29 9 along with one or more co-conspirators for that
10:49:33 10 information to be submitted to ESL to receive more funds
10:49:37 11 from the loan?

10:49:38 12 THE DEFENDANT: Yes, your Honor.

10:49:39 13 THE COURT: And do you agree that the
10:49:41 14 transmission via wire of this inaccurate information to
10:49:44 15 ESL to obtain the construction loan was an overt act
10:49:49 16 committed to obtain a larger amount of the construction
10:49:51 17 loan than what would have otherwise been supported by
10:49:54 18 the actual figures. Is that true?

10:49:56 19 THE DEFENDANT: Yes, your Honor.

10:50:01 20 THE COURT: And do you agree that the facts
10:50:02 21 that we've just gone over and that what you just
10:50:06 22 testified to and answered my questions about, that the
10:50:10 23 government would be able to prove those facts beyond a
10:50:13 24 reasonable doubt at trial or another hearing?

10:50:15 25 THE DEFENDANT: Yes, your Honor.

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10:50:16 2 THE COURT: All right. Let me ask the
10:50:19 3 government, first of all. Anything else that you think
10:50:21 4 I should cover?

10:50:22 5 MR. GLABERSON: No, your Honor.

10:50:23 6 THE COURT: Mr. Cohen?

10:50:23 7 MR. COHEN: No, your Honor.

10:50:24 8 THE COURT: All right. Mr. Morgan, I do
10:50:27 9 find, based on your answers to my questions, that there
10:50:29 10 is a sufficient factual basis for your plea, and,
10:50:32 11 therefore, I will accept it. I'm going to defer on
10:50:35 12 whether or not I accept the plea agreement. But I will
10:50:37 13 accept your plea.

10:50:39 14 So I now am going to ask you, in the
10:50:41 15 presence of your attorneys, how do you plead to the one
10:50:44 16 count Superseding Information charging a violation of
10:50:48 17 Title 18 U.S.C. Section 371?

10:50:54 18 THE DEFENDANT: Guilty.

10:50:54 19 THE COURT: Okay. Thank you. We discussed
10:50:58 20 sentencing dates last week. I think Todd Morgan's
10:51:01 21 sentencing was scheduled for here in Rochester on July
10:51:06 22 21st, maybe, it was a Friday?

10:51:11 23 MR. COHEN: July 22nd.

10:51:12 24 THE COURT: How does that work for counsel
10:51:16 25 and Mr. Robert Morgan?

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10:51:20 2 MR. COHEN: That would work for us, your
10:51:23 3 Honor.

10:51:23 4 THE COURT: Okay. What about 9:30 that
10:51:33 5 morning?

10:51:34 6 MR. COHEN: That's fine, your Honor.

10:51:35 7 THE COURT: Does that work for the
10:51:36 8 government?

10:51:37 9 MR. GLABERSON: Yes, your Honor.

10:51:38 10 THE COURT: We'll schedule Mr. Morgan's
10:51:40 11 sentencing at 9:30 on Friday July 22nd. Are the parties
10:51:45 12 anticipating, I mean, it's going to depend on what the
10:51:48 13 PSR says, but are you anticipating anything being
10:51:52 14 submitted for me to resolve potential disagreement about
10:51:56 15 the offense level, other than written submissions? I
10:52:01 16 mean, in other words, is anybody anticipating that we
10:52:04 17 would have to have an evidentiary hearing to resolve
10:52:06 18 those issues? I mean, because the offense levels is
10:52:12 19 pretty wide disagreement. In the end, it may not impact
10:52:17 20 anything if I accept the 11(c)(1)(C), but --

10:52:22 21 MR. GLABERSON: As your Honor said, I guess
10:52:23 22 it does depend on what the PSR does say. Certainly, the
10:52:28 23 government did not anticipate holding an evidentiary
10:52:31 24 hearing on the issues.

10:52:32 25 THE COURT: What about Mr. Cohen, from the

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10:52:33 2 defense perspective?

10:52:34 3 MR. COHEN: Same general answer, your Honor.
10:52:37 4 Depends on what the report says or what the government
10:52:39 5 does, but we don't have an independent plan to present
10:52:43 6 anything on those issues.

10:52:44 7 THE COURT: What I will do is issue my
10:52:46 8 typical sentencing scheduling order that will set forth
10:52:49 9 the deadlines for various submissions in advance of the
10:52:52 10 sentencing. But if upon seeing the initial draft of the
10:52:55 11 PSR, you believe that there is going to be a need for
10:53:01 12 further discussion, at least, with the Court, let me
10:53:04 13 know and we can have that discussion. Okay?

10:53:07 14 MR. GLABERSON: Yes, your Honor.

10:53:08 15 MR. COHEN: Yes.

10:53:08 16 THE COURT: Anything else on behalf of Mr.
10:53:11 17 Morgan?

10:53:11 18 MR. COHEN: No, your Honor.

10:53:12 19 THE COURT: Anything else on behalf of the
10:53:14 20 government?

10:53:14 21 MR. GLABERSON: No, your Honor.

10:53:14 22 THE COURT: All right. Thank you,
10:53:16 23 everybody. Have a good day.

10:53:17 24 MR. GLABERSON: Thank you.

10:53:19 25 THE DEFENDANT: Thank you.

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CERTIFICATE OF REPORTER

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I certify that the foregoing is a correct transcript
of the record of proceedings in the above-entitled
matter.

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10 S/ Karen J. Clark, RPR

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Official Court Reporter

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